

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Sam McCray, #284915,)	C/A 9:05-1453-CMC-GCK
)	
Plaintiff,)	
v.)	
)	OPINION and ORDER
Kirkland Correctional Institution; Warden Bernard)	
McKie; Kirkland Medical; Dr. Jomil; Nurse Deppe;)	
Headquarters S.C. Department of Corrections; and)	
Director Ozmint,)	
)	
Defendants.)	
)	

Plaintiff is a *pro se* inmate currently incarcerated in the South Carolina Department of Corrections. Plaintiff filed suit in this court pursuant to 42 U.S.C. § 1983 alleging inattention to a previously undiagnosed medical condition by medical officials at Kirkland Correctional Institution.

In accordance with the court's order of reference, 28 U.S.C. § 636 (b), and Local Rule 73.02 (B)(2)(d) (D.S.C.), this matter was referred to United States Magistrate Judge George C. Kosko for pre-trial proceedings and a Report and Recommendation. On May 24, 2005, the Magistrate Judge issued a Report recommending dismissal of Plaintiff's complaint without prejudice and without issuance and service of process. The Magistrate Judge reasoned Plaintiff's claims are not cognizable in this court because they do not allege deliberate indifference to his previously undiagnosed diabetes, but rather allege either negligence or gross or willful negligence.

The Report advised Plaintiff of the procedures and requirements for filing timely objections to the Report and Recommendation. On July 5, 2005, Plaintiff filed objections to the Report and Recommendation of the Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has

no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

The court has reviewed the complete record in this matter, including the pleadings, Report and Recommendation of the Magistrate Judge, Plaintiff's objections, and the applicable law. The court agrees with the Report's analysis of Plaintiff's claims. Plaintiff's objections do not raise any legally meritorious issues in opposition to the Report and Recommendation. Accordingly, the Magistrate Judge's Report and Recommendation is adopted in full and incorporated into this Order.

IT IS THEREFORE ORDERED that Plaintiff's Complaint is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Cameron McGowan Currie

CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 17, 2005

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